

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

J. DOES 1-26,)
Plaintiffs,)
v.) CASE NUMBER: 8:25-cv-00462-TDC
ELON MUSK, ET AL.)
Defendant.)
_____)

TRANSCRIPT OF PROCEEDINGS - CASE MANAGEMENT CONFERENCE
BEFORE THE HONORABLE THEODORE D. CHUANG
UNITED STATES DISTRICT JUDGE
Tuesday, February 18, 2025

A P P E A R A N C E S

FOR THE PLAINTIFFS:

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APPEARANCES (continued)

Also Present:

**Andrew Warren, Esquire
For the Plaintiffs**

P R O C E E D I N G S

(1:30 p.m.)

THE COURTROOM DEPUTY: The matter now pending before this Court is Civil Action Number TDC-25-0462, J. Does 1-26 v. Elon Musk, et al. We are here today for the purpose of a Case Management Conference.

Beginning with the plaintiffs, counsel, please identify yourselves for the record.

MR. EISEN: Good afternoon, Your Honor. This is Norman Eisen, counsel for the plaintiffs. And my co-counsel who are with me will identify themselves starting with Ms. Mimi Marziani. And Ms. Marziani and I will be principally handling the conference today.

Ms. Marziani?

MS. MARZIANI: Thank you. Good afternoon, Your Honor. This is Mimi Marziani.

THE COURT: Good afternoon.

Anyone else on for the plaintiff?

MR. GONZALEZ: This is Joaquin Gonzalez on behalf of plaintiffs.

MR. EISEN: Ms. Stevens?

MS. STEVENS: Good afternoon, Your Honor. Rebecca Stevens here on behalf of the plaintiffs.

MR. EISEN: Ms. Mays?

MS. MAYS: Good afternoon, Your Honor. Tianna Mays

1 on behalf of the plaintiffs.

2 **MR. EISEN:** Mr. Warren?

3 **MR. WARREN:** And good afternoon, Your Honor. Andrew
4 Warren on behalf of the plaintiffs.

5 **MR. EISEN:** Thank you, Your Honor. That's us.

6 **THE COURT:** Okay.

7 For the defendants?

8 **MS. MARZULLO:** Good afternoon, Your Honor --

9 **(Voices overlap.)**

10 **MS. MARZULLO:** My apologies, Your Honor. Kelly
11 Marzullo from the U.S. Attorney's Office.

12 **THE COURT:** Okay. Good morning -- good afternoon,
13 Your Honor.

14 **(Voices overlap.)**

15 **MS. MARZULLO:** I'm sorry to interrupt.

16 **THE COURT:** Go ahead.

17 **MS. MARZULLO:** Your Honor, I'm sorry to interrupt.
18 Chris Hall may have already introduced himself. He's from
19 Main Justice. Mr. Hall?

20 **MR. HALL:** Thank you. Hello, Your Honor. This is
21 Christopher Hall with the Department of Justice, civil
22 division, federal programs branch.

23 **THE COURT:** Okay, hold on one second, everyone.

24 Okay. Thanks, everyone.

25 So we're here for a Case Management Conference and part

1 of the reason is to get some clarity on what the next steps
2 are in the case and so forth.

3 I understand the plaintiff would like to file a motion
4 and the description is emergency preliminary relief and then
5 it proposes a schedule in which it refers to it as a motion
6 for a Temporary Restraining Order. And that's what it seems
7 to reference it as.

8 Now my general view under Rule 65(b) is the purpose of a
9 Motion for a Temporary Restraining Order is to get a temporary
10 ruling ex parte before the other side has even had a chance to
11 appear, when the emergency is so significant that an immediate
12 temporary ruling needs to be put in place.

13 Now that the Government is in the case it's unclear why
14 we need to do that. And my usual approach is just to pull
15 this together as a Motion for a Preliminary Injunction.

16 Is there any problem with that that either side sees?

17 **MR. EISEN:** Your Honor, for the plaintiffs we have
18 no problem with that. We're ready to proceed, ready to
19 describe the imminent, and immediate, and irreparable injury
20 that justifies an expedited schedule whether -- and we're
21 perfectly prepared to do that on a PI posture.

22 **THE COURT:** Okay. Well, that's helpful.

23 Now in terms of how to go about that, you know, sometimes
24 -- and I think there's reference in the letter there's some
25 discussion of possibly some discovery and sometimes that's

1 formal or it could just be an informal exchange of information
2 to make the whole -- make the process addressing this type of
3 motion more efficient for everyone.

4 Is that something that's still being discussed or not?

5 **MR. EISEN:** Your Honor, it's Norman Eisen on behalf
6 of the plaintiffs. We had that initial discussion. We were
7 unable to come to any resolution on that and I think so now
8 that -- and I'll let the Government speak for their position.
9 You know, now that we're together we're prepared to keep
10 discussing that, but our priority is some of these plaintiffs
11 are in the most extreme risk and high-risk situations abroad
12 where they've been locked out of systems that they need to
13 protect themselves and their families.

14 So we have provided our TRO papers which we'll redo as --
15 we can redo as PI papers, but we would be most interested in
16 resuming that conversation, how can we get protection for
17 those individuals, how can we get some basic discovery that we
18 need in these truly potentially life-threatening situations.
19 We're ready to do whatever is necessary to see what's possible
20 consensually, and, indeed, have had multiple contacts with the
21 Government to that end.

22 **THE COURT:** Um-hum.

23 Mr. Hall and Ms. Marziani, anything you want to add in
24 terms of timing? So, for example, these issues that Mr. Eisen
25 is raising about individuals who might be an extremist who

1 might be overseas with serious issues, that seems like the
2 kind of thing that could be addressed even without any kind of
3 impact on the merits of the case. Is there anything in the
4 works in that regard? And I ask that just because it arguably
5 could affect the schedule that we're pursuing. What exactly
6 are the issues out there that immediately need to be
7 addressed?

8 **MR. HALL:** Of course, Your Honor. This is
9 Christopher Hall. I guess two points or possibly questions.
10 One, we would need to work with plaintiffs' counsel to verify
11 as much information as they are comfortable disclosing while
12 retaining their John and Jane Doe status to let us determine
13 if these particular plaintiffs are already covered by the
14 District Court's orders in the USAID litigation that's
15 currently pending in DDC in front of Judge Nichols. It may
16 well be that for whatever reason, these individual J. Doe
17 plaintiffs are not encompassed by the temporary relief that
18 the Court has put in place in that litigation.

19 I can discuss that with the colleagues in my office who
20 are handling that and then I can also discuss that with
21 plaintiffs' counsel and we can go from there.

22 And the second point is that if there is truly someone
23 among this group of plaintiffs who is not covered by the
24 relief, the temporary relief that's in place in the other
25 USAID litigation, we would be perfectly happy and willing on

1 an expedited basis to work with plaintiffs' counsel to ensure
2 that the status quo is acceptable and they are not in danger
3 or not at risk of anything going wrong. Happy to do that.
4 Very happy to take that off the Court's plate in terms of
5 considering that as a factor in setting a time table because
6 we would certainly like to brief these complicated issues on a
7 timetable that provides the Court the necessary time to issue
8 a reasoned decision. But happy to start that conversation
9 with plaintiffs' counsel as soon as possible this afternoon.

10 I'm due in DC for a different case at 3:00, but I could
11 be on the phone with them as soon as that is over, if that's
12 something that needs to happen quickly.

13 **THE COURT:** Well, certainly if you can establish
14 that these plaintiffs are covered by some other order or that
15 their emergency issues could be addressed, that certainly
16 would affect how expedited the schedule needs to be.

17 The problem seems to be is you're not really able to
18 commit to that right at this moment, so I can't really say
19 even though it sounds like there will be good faith efforts to
20 sort that out, it's not clear that we know for sure how that's
21 going to shake out.

22 But --

23 **MR. HALL:** Appreciate the --

24 **THE COURT:** Go ahead.

25 **MR. EISEN:** Your Honor, if I may.

1 **MR. HALL:** I'm sorry, I don't want to --

2 **THE COURT:** Sorry, who wanted to jump in there?

3 **MR. EISEN:** Your Honor, yeah, it's Norman Eisen
4 coming in again. We have conferred with these plaintiffs and
5 they are not covered by the other order. At shortly before
6 noon we provided the TRO motion, what we had captioned as a
7 TRO motion that we would reframe as a rapid PI, laying out the
8 exigent situation there. But, of course, while we're here on
9 behalf of these 26 John and Jane Does and ready to engage
10 immediately to assure their safety, they also appeared before
11 the Court because they are among the many who are being
12 impacted by this unconstitutional activity that has taken a
13 meat axe -- I don't mean to pre-argue the merits, Your Honor,
14 but has taken a meat axe, a sledgehammer, and a wrecking ball
15 to USAID. It is creating havoc across the world for people
16 who are in the most dire and extreme situations, in high-risk
17 jurisdictions. Them, their partners, their children.

18 So we are keen and we have engaged with the Government by
19 telephone, by email. I know Mr. Hall from other matters and,
20 you know, we're keen to immediately do as much as possible,
21 but there's -- there is an issue of the utmost constitutional
22 urgency and impact and imminence that is before the Court.

23 That is not to say and I can represent that these, after
24 extensive due diligence which we can review, that these 26
25 individuals and many others are not covered by that other TRO

1 before Judge Nichols.

2 At any rate, we're prepared to roll up our sleeves and
3 get to work with Mr. Hall and Ms. Marzullo, but we do think
4 that there is a need to have as rapid a schedule as the Court
5 can accept in place in the event that we're unable to arrive
6 at a consensual solution.

7 I will finally say that we have had good luck in other
8 matters when we work with the Government. We got a complete
9 freeze on the relief of the FBI, 6,000 FBI agents in that
10 matter. We got an order in the treasury DOGE case keeping Mr.
11 Musk out of treasury BFS systems. So we're certainly ready to
12 work with the Government on an appropriate order, but there
13 are some large issues here.

14 **THE COURT:** Okay, well I understand. So I certainly
15 would encourage the parties to work together on at least
16 interim measures, if not resolving the entire matter to give
17 breathing room for everyone to make the best arguments they
18 can and for the Court to give due consideration to the
19 arguments. The more that can be sorted out in terms of what
20 are viewed as immediate emergencies the better. And certainly
21 the Government must understand that if some of those issues
22 can be sorted out, again, without impacting the merits but
23 just to give themselves the opportunity to do more with it, to
24 put together the best argument, perhaps to get some discovery
25 in both directions then that could be helpful.

1 I think what we're going to have to do today though just
2 given that I don't know what efforts can be made and what will
3 happen after the call today, but we'll set up a schedule
4 without any specific knowledge of any accommodations or issues
5 being addressed by the Government. And the way I would look
6 at it is if there are agreements that can be made and then
7 that causes the Government to want to propose an adjustment to
8 the schedule, and ideally if the plaintiffs consent but even
9 if they don't, they could certainly seek to modify the
10 schedule later. But we might as well start with one that
11 assumes that any accommodations will be made because we just
12 don't know that right now.

13 So with that, Mr. Eisen, I just wanted to alert you as
14 you may have seen -- well, you did see that there was this
15 Case Management Order. There's some procedures that go into
16 place in terms of preparing a motion. One of the ones that
17 are sometimes -- parties if there's going to be a factual
18 record, the procedure for creating a joint record is what I
19 would ask you to do.

20 There's also a reference to providing as exhibits,
21 references to internet sources that you're citing because it's
22 never clear when one goes back there that you're looking at
23 the same thing.

24 So with some of those procedures I don't know if you've
25 already planned to or if you've already done those, when would

1 you be in a position to file this motion as a PI motion with
2 all the steps that are required completed?

3 **MR. EISEN:** I'll ask Ms. Marziani, but I think we
4 just change the action. We'll have the conversation about
5 discovery and other things with Mr. Hall and immediate harm,
6 but Ms. Marziani, we could file that within the hours, could
7 we not?

8 **MS. MARZIANI:** That is correct. And thank you, Your
9 Honor. This is Mimi Marziani. I wanted to add that on -- on
10 Sunday --

11 **AN UNIDENTIFIED FEMALE VOICE:** I'm good, how are
12 you?

13 **THE COURT:** Hold on a second. There's some other
14 call going on back there. If someone is not on mute, they
15 should be.

16 Ms. Marziani, go ahead.

17 **MS. MARZIANI:** Thank you.

18 Your Honor, to the point about working with defendants to
19 hopefully obtain this emergency narrow relief we are seeking
20 for our plaintiffs, we told them on Sunday that the emergency
21 relief would focus on the fact that the other cases have not
22 extended relief to personal service contractors, many of whom
23 we represent.

24 And, in addition, it appears that defendants Musk and
25 DOGE retain control of the back-end digital and operational

1 systems at USAID and that perhaps might be the reason that
2 there is only ad hoc compliance with these other court orders.
3 And so now I would -- it is concerning, I guess, that we have
4 previewed this relief and this is the first time the
5 Government has indicated a willingness to work with us.

6 Nevertheless, as Mr. Eisen noted, we are in a position
7 and we have gone over very closely Your Honor's helpful Case
8 Management Order to file this emergency injunctive relief
9 motion within hours of hanging up the phone, with exhibits
10 properly organized.

11 **THE COURT:** So --

12 **MR. EISEN:** So we will have that and file that this
13 afternoon, Your Honor.

14 **THE COURT:** Okay, so let's assume that's the case.

15 Mr. Hall and Ms. Marzullo, when do you propose the
16 Government respond to that?

17 **MR. HALL:** Your Honor, this is Christopher Hall. I
18 think we can respond to the forthcoming PI motion within two
19 weeks. If the Court would like to set a more assertive
20 briefing schedule we can work with that; but given the
21 complexity of the issues that plaintiffs are alleging, I think
22 we're going to need that amount of time to put together
23 everything we need to put together to respond on the factual
24 assertion.

25 And I also just want to add that in response to what Ms.

1 Marziani said about the meet and confer process over the
2 weekend, I don't think that's being entirely accurate or fair.
3 I personally had numerous email exchanges with plaintiffs'
4 counsel in one phone call late on Friday and I said look, we
5 can work with you on this, but we need to know what you are
6 seeking. We need to see a copy of the -- your contemplated
7 TRO motions. Or failing that, we need to understand what the
8 narrow, relatively narrow TRO relief you're going to be
9 requesting is.

10 We were not able to do that. We were not able to get
11 that information from plaintiffs' counsel. So I just want to
12 put that on the record and make it clear that I don't think
13 that assertion is accurate.

14 But having said that, we remain happy to work with
15 plaintiffs' counsel. We will work very diligently to make
16 sure that the 26 main J. Doe plaintiffs are covered and taken
17 care of. And I can't make any promises about how quickly we
18 would be able to retain results on that, but we will work very
19 hard and very efficiently to do that.

20 But in terms of the briefing schedule, it is on weighty
21 questions of constitutional significance. I think we would
22 need 14 days, if the Court is willing to provide it, for us to
23 respond to the PI motion that we understand will be
24 forthcoming today.

25 **THE COURT:** So let me just ask this question first.

1 As I understand it, Mr. Hall, your office -- I think you're
2 responding to a very similar complaint in another
3 jurisdiction. And while every case is different, it would
4 seem as if there was some significant overlap and I think that
5 case has already started a little bit of the way.

6 Am I right about that? I mean, has the Government writ
7 large already started to work on these issues even for the
8 other case that might streamline your process? Are you
9 counsel in the other case too?

10 **MR. HALL:** I am not. I have a role in the
11 background in one of the cases. I believe we have three cases
12 challenging various aspects of what is happening at USAID. I
13 may be wrong about the specific number. I have been
14 coordinating behind the scenes on one of the three cases.

15 I think Your Honor is correct, I think there is overlap.
16 I am a little bit surprised, I was a little bit surprised over
17 the weekend to hear the assertion that none of these J. Doe
18 plaintiffs were encompassed within the relief provided, the
19 temporary relief provided in the case pending before Judge
20 Nichols, but I am guardedly optimistic that we can leverage
21 some of the work that is already happening in those litigation
22 matters and try to get to the bottom of this very quickly or
23 at least as quickly as possible with respect to the 26 J. Doe
24 plaintiffs here. I certainly hope that to be the case.

25 **MR. EISEN:** Your Honor, if I may, without -- I know

1 Mr. Hall has been struggling under the load cases and accept,
2 of course, his representations in good faith.

3 We did notify at 4:52 p.m. on Sunday afternoon we had
4 provided a copy of the emergency relief that we seek with
5 details about the John Doe plaintiffs, but I think it's
6 probably most productive to be forward-looking. We look
7 forward to working with him and Ms. Marzullo to solve these
8 issues.

9 But I do want to emphasize that whether we call it a TRO
10 or a PI, if we are unable to get the relief that is necessary
11 agreed, to go back to what the Court said, we feel that this
12 schedule that we put forward in the letter that we wrote
13 pursuant to the Court's Case Management Order of Tuesday,
14 February 18th, the response on Thursday, February 20th and our
15 reply this Friday is necessary and that we would respectfully
16 urge the Court given the exigency of the situation and the
17 uncertainty of determining whether we can achieve an
18 agreed-upon consent order, that the Court put that schedule in
19 place so we know there's a safety net for these individuals
20 and the PSCs that we have labored pretty diligently on these
21 Personal Service Contractors, looked at the record before
22 Judge Nichols and they -- our belief is, our strong belief
23 supported in the evidence we've gathered they are not covered.

24 Moreover, the complex constitutional questions, this
25 Appointments Clause issue has been frequently litigated. It's

1 been fully briefed to us fairly well before Judge Chutkan next
2 door in DDC.

3 We think that that kind of schedule is necessary. It
4 might even help the parties get to a consent situation like in
5 the FBI and in the Treasury case, Your Honor. And we are
6 prepared to come back and confer with the Court. In both of
7 those cases conferences were helpful, if I may respectfully
8 say so as Judge Kollar-Kotelly and Judge Cobb brought the
9 parties together.

10 So we're ready to work on two tracks, but would strongly
11 advocate for an expedited schedule in case track one does not
12 eventuate.

13 **THE COURT:** So just looking at your Complaint,
14 though, I mean, I guess I'm a little confused what you would
15 actually be asking for in the motion because the only relief
16 sought is declarations of unconstitutionality and enjoining
17 the defendants from performing significant and wide-ranging
18 duties absent an appointment. There's nothing in here about
19 anything specific as to the specific plaintiffs. And so I'm
20 not even sure what it would be.

21 **MR. EISEN:** Your Honor, we have provided the PI
22 action, the TRO where we specify really in the nature of that
23 14-day TRO relief, the relief in the Complaint is susceptible
24 of PI treatment. But in that emergency posture we've
25 identified the critical -- pardon me, the critical harms to

1 these individual plaintiffs that they are confronting around
2 the world, many of them in crisis zones because they're locked
3 out. So we have a very particularized TRO, set of TRO papers
4 to address the issues.

5 We have one plaintiff who is currently in a high-risk
6 area, for example. We spell all this out in the papers that
7 we'll get to the Court and we've already given to the
8 Government. Those in a high-risk zone who's been locked out
9 of all their systems, including systems that they need to deal
10 with emergencies to be able to do some of the basic
11 functioning.

12 So it's those kinds of urgent, exigent matters that are
13 triggered by the Constitutional violations here that would be
14 addressed in that super expedited TRO posture.

15 That is what the content of the order would be. It's
16 really in the nature of the other and further relief that we
17 point to in our Complaint.

18 **MS. MARZIANI:** And Your Honor?

19 **THE COURT:** One attorney per side, per issue--

20 **MS. MARZIANI:** Understood.

21 **THE COURT:** --Ms. Marziani, but I'll let you make
22 this one comment, but let's try not to double-team the other
23 side.

24 Go ahead, Ms. Marziani.

25 **MS. MARZIANI:** Thank you so much, Your Honor.

1 I just wanted to point out that as my colleague has been
2 saying, the very narrow relief that we're seeking in this
3 emergency order would do nothing more than revert back to the
4 last uncontested status quo. It would give our plaintiffs
5 access to the USAID systems to ensure their safety overseas,
6 to ensure that their personal information is not at risk. And
7 as my colleague said, we include numerous explanations from
8 the plaintiffs as recent as this morning to emphasize
9 irreparable harm that they are now facing.

10 **THE COURT:** So Mr. Hall, having received this, I
11 mean, do you think that some of that can be accommodated now
12 that I know you've already got the papers?

13 **MR. HALL:** Your Honor, thank you for that question.
14 I am reading the courtesy copy of the TRO brief as we speak.
15 I was at an appointment this morning and I printed it out as
16 soon as I got into the office and started reading it shortly
17 before the call started. So I am not -- I've learned the hard
18 way I can only do one thing at a time. I wish I could do two
19 or more at the same time. I am still trying to digest it as
20 we speak.

21 But I will say this: Everything I'm hearing from
22 plaintiffs' counsel to me suggests that these two questions
23 can be disaggregated a bit in a practical sense.

24 One, number one, to the extent they can give me the
25 information I need to take back to our clients at USAID and

1 execute on trying to restore the functions they need,
2 willingly and voluntarily, I can do that. I don't think I
3 have what I need at the moment because these are J. Does which
4 I totally understand, but if they can get me that information
5 then I can go to my client very, very quickly after court
6 events this afternoon are completed, at least, and get to work
7 on that.

8 And then I think the second part of this that can be
9 disaggregated is that we've got very weighty constitutional
10 questions and I would certainly take issue with counsel's
11 suggestion that these are sort of easy to brief on a very
12 expedited time table. I don't think they are. I think they
13 are very challenging and very complicated.

14 And so I think we would need the necessary time to brief
15 them so that we can assist the Court in reaching a carefully
16 considered determination, as I know the Court would like to
17 do.

18 So if what we are concerned about in terms of immediacy
19 is making sure that the 26 J. Doe plaintiffs are protected and
20 taken care of and their access is restored so that they can
21 function in their environment safely and effectively, we can
22 do that, or we can at least do that as quickly as possible.
23 And then we can approach the weighty constitutional questions
24 that will need to be briefed for the Court's consideration on
25 a schedule that makes more sense.

1 Can I just have one point? I know that these issues are
2 pending before Judge Chutkan in DDC, but the briefing there is
3 obviously expedited as well. So I think it would benefit this
4 Court, it would probably benefit the Court in that case to get
5 a more fully considered, more fully developed analysis on
6 these questions.

7 **MR. EISEN:** Your Honor, if I may.

8 **THE COURT:** So just to clarify -- last point on this
9 issue and then we'll move on, but going ahead, Mr. Eisen.

10 **MR. EISEN:** No. After you, Your Honor.

11 **THE COURT:** Well, I was going to ask just on Mr.
12 Hall's point, it seems to me that the broader issues are very
13 similar between this case and the Chutkan case, maybe not the
14 issues regarding the individual plaintiffs, but to what extent
15 would a favorable ruling for the plaintiff in that case
16 address some of your emergency issues?

17 **MR. EISEN:** If the plaintiffs were to meet with
18 success in that case, then we would have to apply the finding
19 under the Appointments Clause and the other constitutional
20 bases to the specifics here. It would be germane.

21 I think if I may clarify my friend, Mr. Hall's, comment,
22 I was by no means suggesting that these issues are easy, but I
23 have before me on my dining room table a rather large pile of
24 paper that the Government and the states have produced very
25 thoroughly ventilating the issues. I will note no one knows

1 how Judge Chutkan will rule in that case. She did evince some
2 skepticism about some of the Government's representations with
3 respect to the status of Mr. Musk. That goes to the
4 reciprocal discovery which we'll also discuss with Mr. Hall as
5 soon as he's free of his duties in his 3 p.m. hearing.

6 But Your Honor, what I come back to -- and some of this
7 is eventuated by the targeting that the Court will also see
8 that Mr. Musk and others have done as specific individuals.
9 And as you'll see in our papers for emergency relief, even
10 listing personal names and a great deal of personal
11 information about some USAID PSCs on publicly available
12 websites, these are individuals who sometimes serve or have
13 served in some of the most dangerous parts of the world where
14 they're exposed to great peril.

15 We would have to also figure out -- and we'll present the
16 Court with the proposed order -- we would have to also figure
17 out how to achieve the kind of status quo freeze that was
18 disrupted by the, in our view, unconstitutional wrecking ball
19 represented by Mr. Musk and the DOGE sweeping through USAID in
20 the United States and globally to -- in order -- the relief to
21 preserve that status quo, there's a way to do that that
22 doesn't require the individuals to be singled out. So that's
23 something that we would have to discuss with Mr. Hall and, you
24 know, how do we do this without making our 26 John and Jane
25 Does a target when he sends that list of names back.

1 We think there are ways to do that, generalizing the
2 status quo emergency relief on very particular things like
3 access to emergency systems. They can just say well, we'll
4 give PSCs everywhere access to emergency systems.

5 So I'm previewing the issues. I'm advocating for a rapid
6 schedule to deal with these issues. We have provided the
7 papers explaining the narrow nature of what must be done now
8 to protect individuals to preserve the status quo. If we can
9 do that, yes, we can have a logical -- a logical PI schedule.
10 But as long as people are at risk, including at risk of being
11 singled out, that puts our clients in a very -- in a very
12 perilous situation.

13 So all of which is to renew my perhaps excessively
14 persistent request for the schedule that we respectfully
15 submitted to the Court in our letter.

16 **THE COURT:** Okay. So, two things: One is I think
17 this is a little bit of an aside.

18 Does the Government have any opposition to the
19 plaintiffs' motion on the Jane Doe status or John Doe status?

20 **MR. HALL:** Your Honor, we do not oppose that. And I
21 regret that I was not able to convey that response to
22 plaintiffs' counsel over the weekend or earlier today, but we
23 do not oppose their motion to proceed under Jane Doe, John and
24 Jane Doe pseudonyms.

25 **THE COURT:** Okay, so I'll grant that motion. And so

1 I understand the complication of that issue. Again, it sounds
2 like the parties are willing to try to work with that on their
3 own without me, which I appreciate. It certainly seems as if
4 whether it's a protective order within the case, attorneys
5 eyes only or certain people who need to be able to effectuate
6 certain things, there are different ways to address that
7 question. So I hope you all will.

8 Here is what I'm going to propose: I do know on the one
9 hand that the Government's -- rather, the plaintiffs in the
10 Chutkan case have had an extensive initial presentation. It's
11 very possible the plaintiffs in this case do as well. I think
12 the Government's initial response was somewhat limited, so I'm
13 not necessarily taking the view that all these issues have
14 been fully looked at.

15 I also think that in this case the facts are very
16 important it seems to me and there are allegations in the
17 Complaint and I would like to know before we rule on any
18 motions what exactly are the facts on the ground, what exactly
19 -- and ideally with documentation too, what is the actual
20 legal status of Mr. Musk within the administration and his
21 staff. How is that documented. Who are the people who have
22 actually been formally making decisions on paper to take
23 certain actions whether it's terminations of individuals,
24 whether it's doing things with the computer systems, are they
25 done personally by Mr. Musk, by someone who works for him, are

1 they signed off on by him or someone else whether it's the
2 president or secretary or someone else. These are all very
3 important facts. There must be documentation of any hiring or
4 appointment of the individuals who are referenced in the
5 Complaint.

6 So beyond just a legal analysis of what is actually -- of
7 what potential legal theories might or might not work, I think
8 we also need to understand the facts. That's why the
9 possibilities in discovery I think is a good one for everyone
10 involved so that we don't start trying to make decisions
11 without knowing the facts.

12 The second thing I just wasn't sure about, Mr. Eisen, was
13 whether your second claim about separation of powers, it
14 wasn't clear to me what specific -- is it just another way of
15 saying that the Appointments Clause was violated and it's
16 really about how Mr. Musk was -- what his official -- whether
17 he was appointed or not and if he wasn't, that would be a
18 violation of separation of powers? But there were references
19 to other things too, so it wasn't clear to me whether that
20 claim was the same except a different theory on the issue of
21 Count One or whether you're identifying other alleged
22 separation of powers issues regarding specific actions that
23 may have violated Congress' prerogatives.

24 Can you just give me a general sense of whether it's just
25 the same set of facts or is it a different range of issues?

1 **MR. EISEN:** Your Honor, while there's overlap
2 between the Appointments Clause claim and the Separation of
3 Powers claim, the overlap is not complete. Our contention is
4 that there has been an extraordinary -- I would say one of the
5 most extraordinary in our history invasion of the Article I
6 prerogatives of Congress. It goes beyond -- certainly it's a
7 similar objective that we will argue and you'll see in our
8 emergency relief papers that we do go back to the founders and
9 the framers to point out that our country does not contemplate
10 that an unelected, unappointed individual would engage in
11 these acts or intrude upon the prerogative of Congress under
12 Article I. So we do point to additional limitations.

13 We write about the Foreign Affairs Reform and
14 Restructuring Act, the role of USAID. There are issues with
15 Mr. Musk having this unauthorized power and then using it to
16 destroy the statutory [indiscernible]. How can DOGE -- again,
17 excuse me for arguing the merits at a scheduling here, but how
18 can DOGE, which is not a Government agency established by the
19 United States Congress be used to destroy a Government agency
20 that Congress using its Article I powers has mandated operate?
21 That is so far beyond anything our history has seen, but this
22 would be another, you know --

23 **THE COURT:** What I hear you saying then is that your
24 Count Two is not just that it's a violation of separation of
25 powers to have someone in the role Mr. Musk is in making the

1 decisions he's making as a matter of who gets to appoint who
2 to do certain things, but within that you're also making
3 arguments that the actions taken violate some sort of
4 separation of powers. It's unclear whether, to me, whether
5 you're arguing constitutional or statutory in terms of runs
6 afoul of various statutes. The alleged closing down of this
7 department, or the spending of money or the not spending of
8 money. Is that part -- part of the claim is that other
9 specific actions, whether it's not spending the money, whether
10 it's firing people or closing down the department or at least
11 seeming to have, that those things themselves are violations
12 of some kind of separation of powers issue beyond just the
13 issue of who has appointed who.

14 **MR. EISEN:** Precisely so, Your Honor. Our
15 contention is that Mr. Musk is doing things even the president
16 is not authorized to do.

17 **THE COURT:** Okay, so it's not just that -- let me
18 just make sure I understand the argument. We're not arguing
19 the merits, I'm just trying to understand the scope of what
20 we're dealing with.

21 **MR. EISEN:** Of course.

22 **THE COURT:** You're saying it's not just that he was
23 improperly appointed or not appointed, but that even if he
24 were properly appointed you still have in your Count Two
25 argument that the conduct or the actions taken by someone even

1 properly appointed still violate the Constitution for other
2 reasons or congressional statutes?

3 **MR. EISEN:** The constitution statutes and law.
4 Precisely so, Your Honor.

5 **THE COURT:** And you're going to spell that all out
6 in your motion? Not just the broad concept of constitutional
7 statutes, but the specific statute and specific constitutional
8 provisions?

9 **MR. EISEN:** Our motion is principally focused on the
10 -- principally focused on the harms, but we go through all the
11 prongs. We do have a three-page section, page 14 to 17 in
12 which we lay out, consistent with the Court's page limits, we
13 studied the order, the local rules closely -- we do lay out a
14 variety of authorities that we believe have been grievously
15 abused, starting with the Constitution itself and going
16 through the representative law, both substantive laws like the
17 FARR, the Foreign Affairs Reform and Restructuring Act, the
18 appropriations laws, the 2024 further consolidated
19 Appropriations Act and a variety of other authorities.

20 The principles that we are articulating are not novel;
21 it's just that no one would have ever thought to do these
22 things before Your Honor at this scope and scale.

23 So again, without arguing the merits, yes. You will get
24 the flavor of that, consistent with the -- and more. You will
25 get the substance of that consistent with packing everything

1 in, including the terrible harms, within the page limits
2 confronting us.

3 **THE COURT:** Okay. So here is what I will do based on
4 everything everyone said. I appreciate everyone's
5 information.

6 So first of all, I'm going to grant the motion regarding
7 the John Doe and Jane Doe's nomenclature; secondly, I'm going
8 to ask the parties as they've agreed to already to work on
9 voluntary, agreed upon relief in the short-term regarding just
10 making sure that the plaintiffs are safe, whether they're
11 overseas or otherwise. And I expect the Government, Mr. Hall
12 said he will, to take that up once he gets names and contact
13 information, that he'll talk to his counterparts within the
14 agencies or elsewhere to try to help with that.

15 Because that is obviously going to take a little bit of
16 time and then also because of the scope of the issues that Mr.
17 Eisen just outlined, it's not just about whether someone is
18 properly appointed, but there's other theories that are at
19 play. And because of whatever harm, either irreparable that
20 may be occurring to the plaintiffs, I can't give any kind of
21 emergency relief if I don't find the likelihood of success on
22 the merits of at least one claim.

23 So we're going to have to work with not only what
24 problems they're facing, but also whether there is a legal
25 theory that is likely to succeed. And the Government has an

1 array of potential theories.

2 I'm going to truncate the usual 14 days for preliminary
3 injunction response, but I'm going to ask that it all be filed
4 by Monday. And when I say Monday, I look at this as -- I
5 think what we really need to start doing, probably for
6 everyone's own benefit, I'm going to ask that it all be filed
7 by noon on Monday, not midnight on Monday. Some seem to think
8 midnight is the deadline; I'm not sure that serves anyone's
9 purposes.

10 I think between the meat there's going to be some facts
11 that are going to have to be pulled together for this. It's
12 not going to be purely argument. I'm going to have to know
13 what's actually going on. And obviously the Government will
14 have to give me their version. Obviously the plaintiffs have
15 fewer facts at their disposal, but they also will have to
16 argue from the facts and not just the law.

17 So having to put the facts together and the multiple
18 legal arguments that are at issue, not just one, I think
19 that's the appropriate amount of time to make sure that I get
20 what I need.

21 As far as a reply brief goes, I would suggest 48 hours
22 taking it out to Wednesday at noon which I believe is the
23 26th. So the first one will be due the 24th; the second will
24 be due the 26th. And then we can pencil in a hearing now if
25 you'd like just to get it on the calendar. Sometime these

1 things can be decided without a hearing, sometimes we need
2 more time than we originally set forth, but we can at least
3 put something on the calendar.

4 The first question though is is this an oral argument
5 type hearing or is anyone planning to present evidence beyond
6 what's already submitted in the papers through affidavits or
7 physical exhibits?

8 **MR. EISEN:** Your Honor, we have an extensive
9 evidentiary record of the harms. We have a large number of
10 affidavits. And just to understand the schedule, so we'll go
11 ahead and file today. The Government files on Monday and then
12 we have the reply brief on 2/26?

13 **THE COURT:** Right. And ideally -- well, the order
14 will say noon for both of the filings so that we can --

15 **MR. EISEN:** And we'll undertake to get cracking --
16 was Your Honor going to suggest a hearing date or did the
17 Court suggest that and I missed it?

18 **THE COURT:** Well, I was going to suggest a hearing
19 date, but part of it was is it just oral argument or is there
20 some potential effort to present witnesses or evidence?

21 **MR. EISEN:** We'll be prepared to present witnesses
22 or evidence if the Court requires that and we'll be ready to
23 do it. Probably too soon to say on the part of the plaintiffs
24 whether that will be necessary.

25 **THE COURT:** Mr. Hall, do you have a view on whether

1 you would have any evidence you'd want to present?

2 **MR. HALL:** Two points. Of course. Two points, Your
3 Honor. One, I do not at this time anticipate that we would
4 need to provide live witness testimony and things of that
5 nature at the hearing.

6 Number two, and this is just a more pragmatic point, in
7 all likelihood it will not be me arguing the motion in this
8 case. I expect it will be someone else from the civil
9 division or from elsewhere within DOJ. So if we need to put a
10 calendar date in pencil on the calendar, I certainly
11 understand that to respect the Court's time, but I would just
12 ask that I would need a little bit of an opportunity to
13 coordinate with my colleagues here in the civil division to
14 determine who would most likely be presenting argument for the
15 Government and what their schedule looks like, understanding
16 that we will do everything in our power to accommodate the
17 Court's schedule.

18 **THE COURT:** Okay. Well, given that it's likely just
19 oral argument, how does Friday, the 28th look in the
20 afternoon?

21 **MR. EISEN:** Fine for our side, Your Honor.

22 **MR. HALL:** Your Honor, I'm trying to navigate to our
23 calendar. I think that works for me, with the caveat that I
24 certainly would like to be there, but it may not be me doing
25 the honors of presenting argument. So I will take that back

1 to folks here and confirm that that date works. And if it
2 doesn't work or it looks like it could be a problem, I will
3 follow up with the Court and with plaintiffs' counsel.

4 **THE COURT:** Okay. I understand you said it doesn't
5 sound like you know specifically who is going to argue this
6 motion, that you probably have some choices. And part of what
7 might make sense is who is available. So why don't we say 2
8 o'clock on Friday, the 28th. And again, why don't you let us
9 know if there is any issues with that, but we're going to
10 assume that for now.

11 And again, I can't promise you anything in particular. I
12 could decide this can be decided without a hearing. I could
13 also decide that I need more time to get ready for the hearing
14 having read the reply brief, that there are other things I
15 want to run down in my own view. So we could try to move that
16 date around, but I think it's good to have something in place
17 that we can all work towards. And so that's my proposal at
18 this point.

19 Okay, anything else for today?

20 **MR. EISEN:** Your Honor, I have a couple of last
21 housekeeping matters. In the event that we're unable to come
22 up with a way to safeguard, to turn the access on for these 26
23 people that does not result in their names landing on the desk
24 of Mr. Musk and the DOGE, I know Mr. Hall will work in good
25 faith on that. But if it's a situation where we can't

1 promptly do that, may we ask the Court to come back and enlist
2 the Court's good offices in that dilemma? Our people are in
3 extremis, Your Honor.

4 **THE COURT:** You can certainly try to do that.
5 Again, what I'm not certain about is exactly what the
6 mechanism is for ordering relief in their favor without making
7 a finding of a likelihood of success on the merits.

8 However, again, if it's things like having a protective
9 order put in place on information, things like that that you
10 don't want [indiscernible] a representation or sort of a
11 voluntary position, but you want something here, particularly
12 if the Government doesn't object to it even if they're not
13 affirmatively asking for it, I think that that certainly is a
14 request that I would consider.

15 Any issues with that, Mr. Hall, that you can foresee?

16 **MR. HALL:** No issue, Your Honor. Obviously I would
17 request that we have an opportunity to cure any potential
18 problems that plaintiffs' counsel identify before anyone goes
19 to the Court seeking judicial involvement. I can assure you,
20 the Court, and plaintiffs' counsel, that we'll work in good
21 faith to try to accomplish this on as quick a turnaround as
22 possible. We will obviously need information from plaintiffs'
23 counsel so that we can identify the 26 John and Jane Does.

24 **THE COURT:** Of course.

25 **MR. HALL:** But if something goes awry or if it's not

1 happening fast enough, we would just ask that plaintiffs'
2 counsel in good faith correspond with us and give us an
3 opportunity to fix the problem before it gets escalated to the
4 Court's attention.

5 **THE COURT:** I agree with that. There should be a
6 meet and confer process, meet and confer on this issue before
7 anything is raised. I think, Mr. Eisen, I'm sure implicitly
8 said that he would do that, correct?

9 **MR. EISEN:** I will. I will, Your Honor. And if
10 there's anything Mr. Hall can complain of it is not my
11 frequent emails and calls to him over the past 72 hours. He's
12 been a very good sport in entertaining those. So we'll -- and
13 I think that the Court and Mr. Hall understand the dilemma
14 here that the extreme risk from our perspective is if these 26
15 names make it to Mr. Musk, or the DOGE, or the relief in any
16 way results in further targeting, but we'll work together in
17 good faith. We'll meet and confer and with the Court's
18 indulgence we'll be back to you if we're able to clear that
19 circle.

20 And the only other housekeeping matter that I have is we
21 have some pro hoc vice motions that are pending before the
22 Court and, of course, you can tell that my colleagues are
23 eager to be active participants, particularly if we're able to
24 work out that informal or formal discovery process, Your
25 Honor. So that's Mr. Gonzalez, Ms. Marziani, and Ms. Stevens.

1 And I just would call that to the Court's attention so that we
2 take care of that last piece of business.

3 **THE COURT:** Okay, so usually that happens in a
4 different office than mine, but I will point out that those
5 are all part of a live case and usually they move very quickly
6 on those anyway if all the paperwork is in order, so we'll do
7 that.

8 We'll issue an order with the dates that I set forth on
9 the schedule.

10 The only thing I would just add is one clarification for
11 a case like this. I mean, I think it should be clear from the
12 Case Management Order that if you're adding documentary
13 evidence which you've already said you will do, then we should
14 create a joint record so that the citations are easier for
15 everyone and we only have one document used once in the record
16 and not the same document put in two different places where we
17 can't be sure if it's the same document. But because of the
18 expedited nature of this, usually I don't need to get a copy
19 of any of those documents until the very end, in fact, seven
20 days after they're all submitted. Obviously that's not ideal
21 in this situation.

22 So what I would ask everyone to do, when the motion is
23 filed you should give me a set of the documents that you are
24 using which would be the first set of the joint record
25 numbered accordingly. Usually I don't get that right up

1 front, but you should submit that.

2 The Government, if they wanted to add anything, would
3 pick up the numbers where you left off and they should also
4 submit a set when they file their brief. And then the
5 plaintiff should do -- well, rather than necessarily give me a
6 separate set of the reply documents, you could do that if
7 there are any, but you could also submit that whole joint
8 record. But rather than submitting it seven days after the
9 end, I'd ask you to get me the actual joint record probably by
10 the end of the day on that Wednesday, the 26th. In case you
11 need a little time to process in the afternoon you can do
12 that. So then we'll have all the documents together at the
13 same time.

14 And just note that while they do need to be docketed,
15 things of this size, there is a requirement in the local rules
16 for courtesy copies. So I'd ask you to provide that.

17 Anything else? Any questions on that or anything else
18 for today?

19 **MS. MARZIANI:** Your Honor, this is Mimi Marziani.
20 Sorry, Norm.

21 **MR. EISEN:** I was just going to ask if any of my
22 colleagues, with the Court's indulgence since we're not
23 sitting at counsel table, Your Honor, to pass notes, if I may
24 ask if any of my colleagues had anything else they wanted to
25 raise.

1 **MS. MARZIANI:** Yes, thank you.

2 **MR. EISEN:** Ms. Marziani?

3 **MS. MARZIANI:** I wanted to clarify, Your Honor, in
4 the motion that we will be filing later today, are you also
5 giving us leave to file for expedited discovery alongside the
6 preliminary injunction? Because we would like to be able to
7 do that.

8 **MR. EISEN:** Ms. Marziani, I think the Court's
9 request was that we first confer on the discovery.

10 Your Honor, if I understood what you preferred, you
11 wanted us first to confer?

12 **THE COURT:** Well, there's two different issues on
13 conferring. One was the most recent one about how to sort out
14 the issues with the plaintiffs. I think from the discovery it
15 sounded from the beginning that the parties were talking
16 already, so I would prefer that you reach a point where those
17 discussions have been exhausted before you file anything in
18 that regard.

19 But I guess I would say that since we've already had a
20 lengthy discussion today, if there comes a need for that you
21 can make that argument, but you should try to exhaust any
22 voluntary means first before you do that.

23 **MR. EISEN:** It will be top of agenda after we talk
24 about protecting our 26 clients when we chat with Mr. Hall
25 today and we've gotten the ball rolling and we'll be ready to

1 -- we'll be ready to keep the Court posted on that.

2 **MR. HALL:** Your Honor, this is Christopher Hall. If
3 I can make one point. I do have to run and I apologize, I
4 just want to make sure that I leave enough time to get to DDC
5 by 3:00. But I want to make it very clear that the Government
6 will do everything in its power to work with plaintiffs'
7 counsel on ensuring the safety and security of the 26 J. Doe
8 plaintiffs. We will do everything in our power to meet the
9 aggressive, but understandable briefing schedule set by the
10 Court. But if plaintiffs want to pursue discovery while all
11 of this is happening, I have litigated for the Department of
12 Justice for a long time now and I can say on the record with
13 absolute certainty that will blow everything up. We cannot do
14 all these things at the same time on this time table, as a
15 practical matter. I just want to make that very clear on the
16 record.

17 **THE COURT:** Okay, so first of all --

18 **MR. HALL:** And I made it very clear over the
19 weekend.

20 **THE COURT:** No, I understand. What I would just say
21 is in terms of voluntary exchange of information, you're going
22 to kind of do that anyway in the sense that anybody who
23 attaches anything to a motion to brief is effectively giving
24 discovery. And so frankly, if the Government has things it's
25 going to use that they think helps their case or they think

1 clarifies the situation, they should just provide those now
2 and not sort of spring them upon everyone at the end because
3 it will just -- but again, anything you have on these issues,
4 again, on the questions I had about who appointed who and who
5 is making the actual decisions, I think I would want to see
6 that information. And so if you have that, you should share
7 that with the other side.

8 But I agree with you that if we're going to get into
9 actual discovery, obviously just to pull those records
10 together is going to consume the amount of time we have now.
11 So my assumption with these kinds of things is the plaintiffs
12 -- if they ask for expedited discovery, that will push back
13 the time table on a ruling.

14 I think usually the way these parties try to do this is
15 they say give me preliminary relief now, but if you're not
16 prepared to do that, we want discovery before you close out
17 this motion because it's possible that will change things.
18 That's usually how I think it works.

19 So I think a ruling could be made, but you're right, not
20 with a discovery process completed. So they can either say
21 we're willing to push the whole thing back to get our
22 discovery or that's sort of an alternative issue, if you're
23 not willing to rule for us now then let us ask for some things
24 in discovery and come back to you later and ask you again, or
25 something like that.

1 Does that sound clear to everyone?

2 **MR. EISEN:** It does. We just, you know, the
3 questions about Mr. Musk and his staff and who has been making
4 decisions, has it been done personally or signed off on, you
5 know, those kinds of questions are pretty -- are ones that are
6 fundamental that should be public record, that are going to be
7 necessary for the Government to, we believe, address the law
8 here.

9 Other than affidavits dropping from the sky after
10 argument, it was one of those yesterday, I believe, in the
11 Chutkan case and, you know, there ought to be -- those are the
12 kinds of things that we ought to have access to. That's
13 public record transparency stuff.

14 **THE COURT:** I understand that.

15 **MR. EISEN:** We don't want to front-load -- but I
16 don't want to front-load that argument. I want to talk to --
17 if we may, Your Honor, we can thrash it out now, but can we
18 have that conversation with Mr. Hall? Can we present him with
19 some--

20 **THE COURT:** You're going to have -- I have to let
21 Mr. Hall go because the last thing I want is for some
22 colleague of mine on another court to be delayed because Mr.
23 Hall was not available. So I'm going to release Mr. Hall and
24 conclude this proceeding.

25 I would just say as I said, you know, you should have

1 informal discovery discussions. I would encourage everyone to
2 exchange as much as they can. To the extent there's disputes
3 you can ask for something from the Court. You should -- I
4 agree with Mr. Hall, at least in part you should understand
5 that that could slow down a ruling if the ruling is dependent
6 on those documents, but it depends on what you think is more
7 important, getting a ruling without those documents or getting
8 the documents first and then getting a ruling, which may not
9 be as quick, although obviously we can set aggressive
10 schedules on discovery as well. That's a possibility.

11 All right, thank you very much.

12 **MR. EISEN:** Thank you, Your Honor.

13 **THE COURT:** Thank you. Have a good day.

14 **MR. HALL:** Thank you.

15 **(Whereupon the proceeding was concluded at 2:34**

16 **p.m.)**

1 CERTIFICATE OF OFFICIAL REPORTER

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3
4
5 I, Nadine M. Bachmann, Registered Merit Reporter and
6 Certified Realtime Reporter, do hereby certify that the
7 foregoing is a correct transcript of the audio-recorded
8 proceedings in the above-entitled matter, audio recorded via
9 FTR Gold on February 18, 2025, and transcribed from the audio
10 recording to the best of my ability and that said transcript
11 has been compared with the audio recording.

12
13 Dated this 22nd day of February, 2025.

14
15 -S-

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